# Criminal Division

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∗ Mr. Richter frequently speaks from notes and may depart from the speech as prepared.

Thank you for that kind introduction and for the invitation to be here. As a prosecutor, I'm always interested in speaking with people like me who have a great interest in unraveling fraudulent and deceptive behavior. As you know, since the collapse of Worldcom and Enron, this Administration has been engaged a very determined effort to combat corporate fraud. I'm pleased to report that after three years by the President's Corporate Fraud Task Force it is fair to say that there is in our markets a renewed commitment in good corporate citizenship, ethics, and governance.

Today, I want to touch on a few topics that have been key to this success. First, I'd like to discuss how we have institutionalized genuine cooperation from companies facing government investigations and how, in so doing, professionals such as accountants and lawyers have come to understand their role in ensuring good corporate citizenship, ethics and governance.

I also will discuss briefly several emerging areas on our radar for increased attention.

## The President's Corporate Fraud Task Force

From the Enron scandal that surfaced in late 2001, through the WorldCom and Adelphia prosecutions announced in the summer of 2002, a series of high-profile acts of deception by a few corporations shook the public's trust, the financial markets, and the economy. A few dishonest individuals hurt the reputations of our honest companies and executives. They hurt workers who had committed their lives to building the companies that hired them. They hurt investors and retirees who had entrusted their savings and their faith in the companies' promises of growth and integrity. And, they hurt the trust and confidence that our citizens and the world had conferred on our financial marketplace.

The President's Corporate Fraud Task Force was a response to this crisis of confidence.

## Successes of the Task Force's First Three Years

Since the Task Force's start, Justice Department prosecutors, working hand-in-hand with regulatory Task Force members and criminal investigators from the FBI, the IRS, and the U.S. Postal Inspection Service have:

- Obtained over 600 corporate fraud convictions
- Charged over 990 defendants – and over 77 corporate CEOs and presidents

In the Enron matter alone, we've charged 33 defendants. We've also seized a whopping $161 million plus for the benefit of victims of the Enron frauds.

A major benefit of our aggressive approach during the past three years has been the ability to conduct "real-time enforcement." Simply put, speed in corporate fraud investigations increases deterrence. We've quickly disgorged ill-gotten gains from the guilty parties, and we've quickly removed wrongdoers from their positions so they can't run the company further into the ground. I know that those of you who've been working in this field for a long time can see the difference – simply put, we make cases quicker these days.

The way we have done this is by taking cases in small pieces. We can't afford to try to assemble the "perfect" case, where every possible defendant and all wrongdoing are compiled into a single mother-of-all indictment. We must bring cases quickly to send the message that fraud does not pay and that our markets are clean. We identify distinct cases, which may comprise separate segments of conduct involved in a larger investigation, and bring them as quickly as possible. Targets and subjects start recognizing that we're serious, that we're moving, and that we're on the offensive. Defendants start "flipping" and helping to advance our investigations more quickly and in new directions; it creates a "snowballing" effect, as we build momentum – a promising momentum for the victims and an ominous one for the bad guys.

For example, in the Enron investigation, we've systematically unraveled the most complicated corporate scandal in history. As I mentioned earlier, 33 defendants have been charged so far – but not, as

might have occurred a few years ago, in one enormous case. A whole bunch of Enron executives, including the CFO, have already pleaded guilty to participating in parts of the massive fraud that destroyed the company. That step-by-step approach led to the indictments of Skilling and Lay earlier last year.

In the case of Adelphia, one of the country's largest cable operators, investigators began looking into allegations of accounting fraud in April 2002, just days after the allegations first surfaced. We quickly uncovered a management scheme to deceive the public about the company's performance. Within only four months, the CEO and four other top executives were in handcuffs. Former CEO John Rigas and his son, former CFO Timothy Rigas, were respectively sentenced recently to 15 and 20 years' imprisonment.

In the WorldCom investigation, the SEC filed its civil enforcement action the day after WorldCom revealed its improper accounting for billions in expenses. Prosecutors immediately began an intensive criminal investigation. Although it soon became clear that accounting irregularities extended to many aspects of WorldCom's financial reporting, we stayed focused on the problems that appeared most likely to support criminal charges, and charged the CFO and Controller just five weeks after the revelation of fraud. The CFO pleaded guilty and agreed to cooperate. That cooperation helped secure the indictment of the CEO himself, Bernie Ebbers, who's now awaiting sentencing, following his conviction.

## **Expecting Corporate Cooperation**

To conduct these complex investigations in a "real-time" manner, we have demanded and secured the companies' true cooperation. Our message on this point has been two-fold: Number one, if you cooperate you get great credit, which can be the difference between life and death for a corporation. Number two, the cooperation must be authentic. You have to get all the way on board and do your best to help the Government.

What I find especially encouraging -- and a credit to a number of companies and their executives -- is that cooperation has become the norm. Company counsel and the markets themselves have come to realize that

adopting a new ethical standard is really in everyone's long-term economic interest.

- More and more companies have made witnesses available without subpoenas. That helps us investigate a lot more quickly and efficiently.
- Some companies have taken swift disciplinary action, not only by replacing managers who are accountable for the underlying fraud, but by terminating employees who refuse to cooperate with the investigation.
- Companies have directed professionals working for them, including outside auditors and counsel, to meet with us and give us prompt access to their workpapers and other records.
- Some companies have postponed or adjusted their internal investigations to suit our needs.
- Several companies have agreed to retain attorneys and accountants of our choice to evaluate their business practices, and to accept their recommendations. That has produced real and substantial reform.
- A lot of companies have turned over interview memoranda and other materials generated in their internal investigations, notwithstanding any claim of privilege they might have.

I want to pause for a second to be very clear on this point because I've heard a lot of anxiety and misunderstanding on it: Waiving the privilege is not a requirement or a litmus test for cooperation. In fact, I have seen companies who have not waived still cooperate fully with the Government. But a waive is a very valuable and helpful action that can go a long way toward persuading us that a company's cooperation is authentic. But it's a big step, and we recognize that. When a corporate target takes that step, we should be giving them more credit for it than if they hadn't.

## Alternative Resolutions

Just as companies have demonstrated true cooperation in different ways, we have encouraged our prosecutors to develop flexible and innovative approaches as they work to ensure that companies accept

responsibility and cooperate with us. In certain cases, an alternative resolution has struck that balance.

One option we've used a great deal is the deferred prosecution agreement, which some people describe as pretrial diversion. We file charges, but agree to defer prosecution for a year, two years, or even longer. In return, the company involved agrees to cooperate fully and admit publicly the facts of its misconduct. The company also typically makes a payment, which is usually structured as a penalty, restitution, or forfeiture. We also require these companies to take remedial actions to make sure the conduct doesn't happen in the future. If the company complies with the agreement, the charges are dismissed at the end of the term. If not, we agree that we will go to trial, armed with the company's admission and all the evidence we obtained from its cooperation.

The DP structure has many of the same benefits as a conviction. In terms of remedies, anything that the judge could impose and more can be required under a DP agreement. Moreover, filing charges publicly condemns the company's conduct.

In other cases, we've used nonprosecution agreements with cooperating companies. These don't involve the filing of charges, but we still typically require the company to admit its conduct publicly. We also retain leverage over the company, because we reserve the right to prosecute if it fails to comply with the agreement – again, armed with the company's admissions. And we can still include virtually any combination of payments and remedial measures.

## **Obstruction of Justice**

Over the past three years, another key element of our real-time enforcement strategy has been to focus on and aggressively pursue those who obstruct our investigations. And, not just in our criminal investigations -- we continue to play the heavy for the SEC. Those who lie in an SEC deposition or destroy documents in an SEC investigation are hiding the truth from all the members of the Corporate Fraud Task Force and should have more than just the SEC to worry about. The cover-up can be worse than the underlying crime. That message should be coming through loud and clear with the convictions of Martha Stewart and Frank Quattrone.

I also want to pause for a moment to address those who might misinterpret the Supreme Court's reversal of the Arthur Anderson conviction as precluding our ability to address obstruction. The decision of the Court in that case focused on the ambiguities of Section 1512 of the United States Code, Title 18. These ambiguities have been fixed by the Sarbanes-Oxley Act of 2002, which more specifically defined the acts of individual and corporate obstruction and financial wrongdoing. Going forward now, therefore, we already have a more focused prosecutorial tool to address obstructive conduct.

And you may be sure we'll use that tool if we need to --

## Foreign Corrupt Practices Act

Another area where our clean-up over the past three years has been having an impact has been in our enforcement of the Foreign Corrupt Practices Act. I assume everyone here is basically familiar with the FCPA, making it illegal for U.S. companies to get business abroad by bribing foreign government officials. Attitudes toward that kind of conduct vary widely among executives. Some persist in thinking that bribery is just a cost of doing business in certain countries. And, there may be some sad truths in that – particularly in countries where government corruption is rampant. The problem is, these bribes undermine exactly what the Corporate Fraud Task Force is intent on restoring: public confidence in the integrity of American business. Under-the-table bribes distort the playing field and hide the truth from the public.

For a number of reasons, I think you'll continue to see steady growth in the number of our FCPA cases. First, the SEC is enforcing the FCPA's civil provisions against publicly held companies.

Second, we're seeing more cooperation from anti-bribery investigators and prosecutors around the world. That kind of cooperation is essential because these are often tough cases to make.

Finally, we're seeing many more companies disclose FCPA violations voluntarily. As I said earlier, companies are getting the message that we're

serious about rooting out illegal corporate conduct, and that helping us get to the bottom of it is far wiser than laying low or trying to hide it.

## Bank Prosecutions

There is another set of cases to which the Department—and the public—have been paying greater attention recently. Over the past two years, the Department has pursued criminal charges against five banks for failing to safeguard against money laundering or to report suspicious financial transactions to the Government. The most recent, of course, was the guilty plea we secured from Riggs Bank. Let me make two important points:

First, contrary to the assertions of some, the Department is not filing criminal charges against banks for simply neglecting to report one or two suspicious transactions. We're not prosecuting for negligence. Rather, the cases we've brought were triggered by egregious failures, over many years, to perform a minimal level of due diligence and live up to their legal obligations. Trust me, where we have agreed to a plea to a failure to file a suspicious activity report, it has been because the financial institution saw that as a favorable resolution given the totality of their bad conduct.

Second, vigorous enforcement of the safeguards against money laundering is critical to fighting other types of crime. Congress passed these statutes not to add compliance costs but to stem the flow of money to bad guys intent on hurting us. The one thing that all seriously bad crooks need is money. For example, terrorists need it to pay rent, book airplane tickets, rent cars, secure identification, build bombs, and so on. That's why our efforts to clamp down on terrorist financing are so important, and getting banks to remain vigilant and cooperative is just another part of that fight. As we've said often when speaking to audiences about the Department's efforts to fight terrorism, we'd much rather catch a terrorist with his hands on a check than on a bomb.

But most banks are victims rather than defendants. And, we are watching closely to see if the continuing wave of real estate lending and refinancing in a booming real estate market may have exposed lending institutions to increasing risks of loss from fraud. The Department is moving rapidly to address these risks through increased consultation with

our investigative and regulatory partners and with coordinated take-downs of mortgage-fraud cases.

## Conclusion

Let me conclude by making a final point. Since 1870, the Justice Department has stood as a bulwark against crime. Criminal law enforcement, however, is a blunt instrument. We aren't regulators. By carrying the burden of proving crime beyond a reasonable doubt, we can only get the worst of the worst. What I mean to say is that criminal enforcement is not only not the only kind fraud prevention, it should be and it is the method of last resort. For our markets to remain free to open competition, fraud prevention must start in companies themselves, from the board room to the mail room. It must be complimented not only by Government civil regulators but by the informal regulatory community – like credit rating agencies – who now judge companies not only on their financial worthiness but by their corporate compliance and ethical culture. Finally, it must be complimented by the outside professional experts like you who advise companies to do the right thing.

In closing, I want to commend and thank all of you for your interest in this area. I hope that our combined efforts will continue to strengthen the integrity of the marketplace and protect the public so that the overwhelming majority of our business and financial community will continue to enjoy the trust they have earned and deserve.

Thank you.